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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

MELVIN TYRONE TINDALL,

Defendant,

v.

UNITED STATES,

Plaintiff.

CRIM. ACTION NO. 3:04-CR-00031

ORDER AND OPINION

JUDGE NORMAN K. MOON

Before the Court is Defendant's Motion to Sever. Tindall argues that the government will use physical evidence, inadmissible as to himself, against his co-defendants at trial. He contends that the government's use of this evidence against his co-defendants may prejudice him because jurors will be unable to avoid associating that evidence with Tindall.

Rule 14 allows the Court to sever defendants' trials if joinder "appears to prejudice a defendant." Fed. R. Crim. P. 14. However, joinder is favored in the federal system, and "a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993). Here, the government's case against Tindall's co-defendants relies on evidence which is suppressed as to Tindall. Because this evidence is admissible only against Tindall's co-defendants, the jury must be able to completely disassociate Tindall from that evidence. Even

the most well-meaning juror might have a difficult time screening out his knowledge of the evidence found in the apartment when contemplating Tindall's guilt. Thus, the use of the suppressed evidence would create a serious risk of prejudice for Defendant. *See id.* ("Evidence that is probative of a defendant's guilt but technically admissible only against a co-defendant also might present a risk of prejudice.") Because the admission of the physical evidence in the apartment against Tindall's co-defendants will likely prejudice Tindall, the Motion to Sever shall be GRANTED.

It is so ORDERED.

The Clerk of the Court is directed to send a copy of this Order to all parties.

ENTERED:

Norm J. Man
U.S. District Judge

October 4, 2005
Date